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10 TIGER NATURAL GAS, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 TIGER NATURAL GAS, INC.,) **Case No.: 3:16-cv-6711**
11 Plaintiff,)
12 vs.) **COMPLAINT FOR:**
13 PACIFIC GAS AND ELECTRIC)
14 COMPANY, a California corporation;) **1. Violation of RICO, 18 U.S.C. § 1961-1968**
15 ALBERT TORRES, an individual; BILL) **2. Respondeat Superior/Agency**
16 CHEN, an individual; TANISHA ROBINSON,) **3. Violation of Sherman Act, 15 U.S.C. § 2;**
an individual,) **4. Breach of fiduciary duty**
17 Defendants.) **5. Intentional misrepresentation;**
18) **6. Negligent misrepresentation;**
19) **7. Intentional interference with contract;**
20) **8. Intentional interference with prospective**
21) **business advantage; and**
22) **9. Violation of California Unfair**
23) **Competition Law, Cal. Bus. & Prof.**
24) **Code § 17200, et seq.**
25)
26) **DEMAND FOR JURY TRIAL**
27)
28)

Plaintiff Tiger Natural Gas, Inc. (“Tiger” or “Plaintiff”) files this Complaint against Defendants Pacific Gas and Electric Company (“PG&E”), Albert Torres, Bill Chen, and Tanisha Robinson for: (1) Violation of RICO, 18 U.S.C. § 1961-1968; (2) Respondeat Superior/Agency; (3) Violation of the Sherman Act § 2, 15 U.S.C. § 2; (4) Breach of fiduciary duty; (5) Intentional misrepresentation; (6) Negligent misrepresentation; (7) Intentional interference with contract; (8) Intentional interference with prospective business advantage; and (9) Violation of the California

COMPLAINT

CASE NO.:

1 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq. In support of these claims, Tiger
2 respectfully makes the following allegations.

3 **NATURE OF CASE**

4 1. This case seeks to remedy PG&E's fraudulent, deceptive, and monopolistic practices
5 in California's deregulated retail natural gas market.

6 2. PG&E is the traditional public utility in Northern California. PG&E currently holds
7 between 70-90% of the natural gas commodity market. Tiger is a certified "Core Transport Agent,"
8 or "CTA," which is a competitive provider of natural gas in California. Tiger operates in PG&E's
9 service area.

10 3. PG&E and Tiger compete to supply natural gas to the same residents and small
11 businesses. Unless the customer affirmatively chooses a different CTA, the customer returns to
12 PG&E by default at the severance of Tiger's contract with the customer.

13 4. Tiger has chosen consolidated billing and collections, available as a matter of right
14 to CTAs under PG&E's tariffs. Under this option, PG&E sends one bill to the customer reflecting
15 both its charges and Tiger's charges; PG&E is responsible for collecting payments and distributing
16 that money to Tiger. PG&E acts as Tiger's agent for these important business functions.

17 5. PG&E has willfully and knowingly manipulated its agency position and engaged in
18 improper and unlawful billing, collection, and payment practices under which PG&E uses its
19 position as Tiger's billing and collections agent to effectively misappropriate money from Tiger,
20 defraud Tiger and its customers, and unfairly compete with Tiger for core natural gas customers.

21 6. For example, PG&E receives payments from Tiger customers and "holds" that
22 money in a PG&E account instead of paying it to Tiger for its commodity charges.

23 7. Similarly, PG&E applies credits from its own services or programs, such as rebates
24 or credits for the use of solar panels, to Tiger's commodity gas charges. In this way, PG&E
25 effectively misappropriates Tiger's customer charges to offset the money that PG&E owes to
26 customers.

27 8. PG&E also inappropriately "reverses" customer charges. A "reversal" should occur
28 only where PG&E permanently terminates service to a customer, either because of non-payment or

1 because the customer terminates PG&E service altogether. Put in perspective of the billing
2 relationship, a reversal signals to Tiger that PG&E has not and cannot collect on any part of the
3 customer's unpaid balances.

4 9. PG&E, however, is reversing Tiger customer accounts for which PG&E has in fact
5 received payment. Instead of applying those charges to the Tiger customer account balance, PG&E
6 is crediting those amounts to its own electric or gas transportation accounts, and then inexplicably
7 reversing the amounts owed to Tiger. PG&E similarly reverses accounts and then deceptively
8 retains the customer.

9 10. These actions cause Tiger substantial harm, both with respect to the amounts
10 withheld and with respect to its relationships with its customers. Tiger has lost countless customers
11 who were annoyed or upset at Tiger's collection efforts on fully paid accounts that PG&E falsely
12 informed Tiger were in arrears.

13 11. Further, Tiger has disconnected or cancelled hundreds of customer accounts for non-
14 payment based on PG&E's false representations made over the wires in interstate commerce to
15 Tiger that the Tiger customers had not paid their bill for Tiger's charges.

16 12. PG&E has also used its fiduciary position as Tiger's billing and collections agent to
17 engage in unlawful competition with Tiger by, among other things, inaccurately informing Tiger's
18 customers that they need not pay for Tiger's services and by using its position as Tiger's billings
19 and collections agent to improperly induce Tiger's customers to switch their service to PG&E.

20 13. PG&E's abuse of its fiduciary relationship with Tiger as well as its abuse of its
21 market power as a regulated monopoly is knowingly calculated to drive away as many customers
22 from Tiger as possible back to PG&E; these actions are done with the specific intent to destroy
23 competition in the retail natural gas commodity market in PG&E's service area.

24 14. PG&E's actions hurt both consumers and competition in California, increasing
25 commodity gas prices in California.

26 THE PARTIES

27 15. Tiger Natural Gas, Inc. is a privately-owned provider of retail natural gas to end-user
28 residential and commercial customers throughout the United States. Tiger is headquartered at 1422

1 East 71st Street, Suite J, Tulsa, Oklahoma 74136.

2 16. Defendant PG&E is a California corporation with its principal place of business
3 located at 77 Beale Street, San Francisco, California 94105. PG&E is a subsidiary of PG&E
4 Corporation and is one of the largest regulated investor-owned electric utilities in California. On its
5 website (<http://www.pge.com>), PG&E represents that its service area extends from Eureka in the
6 north to Bakersfield in the south, and from the Pacific Ocean to the Sierra Nevada. It operates
7 141,215 circuit miles of electric distribution lines and 18,616 circuit miles of interconnected
8 transmission lines throughout this area. According to its website, PG&E maintains 4.3 million
9 natural gas customer accounts.

10 17. PG&E is a regulated monopoly utility within its service area. It is regulated by the
11 California Public Utility Commission (“CPUC”).

12 18. Defendant Albert Torres is the Vice President of Customer Operations at PG&E and
13 manages, *inter alia*, PG&E's billing, payment processing, and credit activities for its customers.
14 Defendant Bill Chen works at PG&E as its ESP Services Manager and manages PG&E's
15 relationships with CTAs (as well as PG&E's relationship with competitive electricity providers).
16 Defendant Tanisha Robinson works at PG&E as its Supervisor for EDI Operations and ESP Billing.
17 Ms. Robinson manages Optional Consolidated PG&E Billing and the process by which EDI files
18 (described below) are transmitted to Tiger.

JURISDICTION & VENUE

19. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this
20 action arises out of PG&E's violations of the laws of the United States. This Court has
21 supplemental jurisdiction over Tiger's claims based on California law under 28 U.S.C. § 1337. In
22 addition, the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because the parties are
23 citizens of different states and the matter in controversy exceeds \$75,000 exclusive of interest and
24 costs.
25

26 20. This Court has personal jurisdiction over PG&E because PG&E resides in this State,
27 does business in this State, has engaged in acts or omissions within this State causing injury, and
28 has otherwise established contacts with this State making the exercise of personal jurisdiction

1 proper.

2 21. Venue is proper in this District under 28 U.S.C. §§ 1331(b)(1) & (2) because PG&E
3 resides in this District, and a substantial part of the events or omissions giving rise to the action
4 occurred in this District.

5 **INTRADISTRICT ASSIGNMENT**

6 22. Pursuant to Civil L-R 3.2(c), intradistrict assignment in San Francisco is proper
7 because the unlawful conduct that gives rise to these claims occurred in the City and County of San
8 Francisco.

9 **GENERAL ALLEGATIONS**

10 23. PG&E has been the regulated monopoly utility in Northern California since 1905. It
11 traditionally provided both electricity and natural gas to all end users—both residential and
12 commercial—in its service area. As a monopoly utility, PG&E is regulated by the CPUC. Through
13 the use of a pre-approved formula, the CPUC regulates the rates that PG&E may charge for the
14 energy it provides, including the price it may charge for the commodity of natural gas.

15 24. According to its website, PG&E has approximately 4.3 million natural gas customer
16 accounts in its service area.

17 25. In 1991, the state legislature partially deregulated the natural-gas utility industry in
18 California.

19 26. In connection with this deregulation, the CPUC established a pilot aggregation
20 program which offered residential and small commercial gas customers, called “core” customers,
21 the opportunity to aggregate their gas loads so that they could participate in competitive gas markets
22 and thereby obtain a lower price for natural gas. Because of this program, California residents are
23 free to purchase their commodity gas from either PG&E or from certain private providers, called
24 “Core Transport Agents,” or CTAs.

25 27. The stated purpose of the CTA program is to “lower[] CTA customer prices and
26 enabl[e] [CTAs] to better compete with utilities and weaken monopolies.” (See
27 <http://www.cpuc.ca.gov/General.aspx?id=4803>.) CTAs such as Tiger provide much-needed and
28 consumer-driven alternatives to the utility model, such as gas commodity fixed pricing, unlimited

1 usage billing, winter fixed rates and guaranteed lower summer rates that the utility model—PG&E’s
 2 model in particular—simply cannot provide.

3 28. Although California core gas customers may purchase their natural gas from a non-
 4 monopoly CTA, the regulated monopoly utilities, including PG&E, continue to provide natural gas
 5 utility service to these customers.

6 29. Accordingly, the CTAs compete with PG&E for natural gas core customers.

7 30. A proposed CTA must fulfill exacting standards to operate in California, completing
 8 an extensive application, submitting the fingerprints of its executives, establishing its
 9 creditworthiness and, ultimately, posting a security bond. Accordingly, the regulatory process itself
 10 creates barriers to entry in addition to typical business needs such as capitalization and market
 11 expertise.

12 31. CTAs purchase natural gas on the open market and sell the gas directly to end users
 13 using PG&E’s distribution system. When an end user purchases gas from a CTA instead of PG&E,
 14 the utility charges a separate “transportation” charge to the customer. In addition, PG&E typically
 15 charges customers for electricity on the same bill.

16 32. The natural gas supplied by the CTAs is fungible in chemical composition and
 17 function, completely interchangeable with that supplied by PG&E; both may be used by core
 18 customers to heat homes and businesses and other such uses.

19 33. As another aspect of deregulation, CTAs may elect, as a matter of right, to have their
 20 billing consolidated with PG&E’s; i.e., both the CTA’s and PG&E’s charges appear on one
 21 statement and the customer pays both with one check (or other method) to PG&E.

22 34. Specifically, under PG&E’s relevant tariffs, known as its “Gas Rules,” CTAs have
 23 the right to participate in a billing and payment program called “Optional Consolidated PG&E
 24 Billing.” If the CTA chooses this billing option, PG&E must calculate the CTA’s charges based on
 25 the customer’s gas usage and apply the proprietary and confidential rate provided by the CTA to
 26 PG&E once a month. Under Consolidated PG&E Billing, PG&E “assumes responsibility for the
 27 accuracy of the calculation of CTA’s charges,” but not for the accuracy of the CTA’s rate per therm
 28 of natural gas provided. Gas Rule No. 23.C.1.c(1)(b)(iv).

1 35. PG&E operates Consolidated Billing as a unit separate from its primary business
 2 activities. Tanisha Robinson, for example, supervises two employees whose responsibility includes
 3 little else beyond sending the electronic files referenced in Paragraphs 54, 66, and 76 and otherwise
 4 maintaining the Consolidated Billing structure imposed by Gas Rule 23. William Chen similarly
 5 devotes all of his work time to managing either Consolidated Billing or to managing customer care
 6 issues (e.g., switching customers' gas commodity service either to or from a CTA) associated with
 7 Consolidated Billing.

8 36. Under Consolidated Billing, PG&E also acts as the CTA's collections agent. As
 9 such, PG&E is required to pay to the CTA the amounts paid to PG&E for the CTA's gas
 10 commodity charges after it receives that money from the customer. Gas Rule 23.C.1.c(4)(a). PG&E
 11 is required to transfer the received payments to the CTA either 17 days after the bill was rendered to
 12 the customer or the next business day after the payment is received by the utility. *Id.*

13 37. When transferring payments, PG&E is required to specify the amount paid by each
 14 service account. *Id.* If there are any amounts resulting from returned payments (e.g., the customer's
 15 check "bounces") or returned payment charges, PG&E may debit those amounts to the CTA on the
 16 billing statement for the following month. *Id.* The tariffs permit no other debits or set-offs.

17 38. PG&E is responsible for collecting the unpaid balance of all charges from customers,
 18 sending notices informing customers of unpaid balances, and taking the appropriate actions to
 19 recover any unpaid amounts owed to the CTA. Gas Rule 23.C.1.c(5)(a).

20 39. Tiger is a qualified CTA operating in PG&E's service area. Tiger signed a Core Gas
 21 Aggregation Service Agreement with PG&E in January 2009 and began serving customers in
 22 Northern California shortly thereafter.

23 40. Tiger supplies natural gas to its customers by transporting it across interstate
 24 pipelines for delivery to the PG&E Citygate. On receipt of Tiger's gas, PG&E charges Tiger both
 25 for storing it and for transporting it to the customer based on "take or pay" terms, the amount of
 26 which is determined by reference to Tiger's overall volume (or "load") calculated on both a
 27 monthly and yearly basis.

28 41. Tiger spends significant time and money marketing for customers. These activities

1 include engaging in direct-mail marketing, door-to-door marketing, internet and print campaigns,
2 and other activities.

3 42. As a result of these marketing efforts, Tiger grew its customer base in PG&E's
4 service area to approximately 39,000 customers as of October 2016.

5 43. Tiger participates in the Consolidated PG&E Billing Option, making PG&E its
6 billing and collections agent for all of Tiger's core customers in PG&E's service area. Tiger pays
7 PG&E approximately \$25,000 per month for this service.

8 44. Because PG&E holds all of Tiger's customer information and also is responsible for
9 calculating the amount due, billing those amounts, collecting the money, and providing it to Tiger,
10 the utility exercises a tremendous amount of control over Tiger's customer base.

11 **PG&E's Payment Withholding Scheme**

12 45. After PG&E receives the customer's payment, it unilaterally divides the payments
13 among the various service accounts contained in the bill, including Tiger's charges for natural gas,
14 PG&E's transportation charge, and PG&E's electricity charges (if any). PG&E takes the position
15 that this process is proprietary and will not share information about how it divides the payments
16 received. In its role as Tiger's billing and collections agent, PG&E has engaged in improper and
17 unlawful activities which have violated Tiger's rights and caused Tiger damages and irreparable
18 harm in a number of ways.

19 46. Specifically, for some of Tiger's core customers, PG&E simply does not remit to
20 Tiger funds it has received for Tiger's gas commodity charges. As of the date of this filing, Tiger
21 has not received full payment from PG&E on thousands of Tiger customer accounts. According to
22 Tiger's records, as of at least October 2016, it is owed over \$1.3 million from its customers with
23 aging accounts past due by sixty days or more.

24 47. To track the billing process, PG&E regularly provides Tiger with an Electronic Data
25 Interchange ("EDI") file or a file transfer link containing information about each account for which
26 there is activity. For easy reference, Tiger in this Complaint refers to the types of information
27 packets sent by PG&E as "EDI files" regardless of format.

28 48. The EDI files contain information about the status of Tiger's customer accounts.

1 Specifically, in the EDI files PG&E makes several representations to Tiger about its customers,
2 including:

- 3 a. Tiger customers to whom PG&E has sent a bill containing Tiger's commodity gas
4 charges and the amount of Tiger's charges that PG&E will collect;
- 5 b. Tiger customers who have paid Tiger's previous charges and the amount PG&E has
6 apportioned to Tiger;
- 7 c. The balance of the Tiger customer's account for Tiger's commodity gas charges;
- 8 d. The identity of Tiger customers who have not fully paid Tiger's gas charges; and/or
- 9 e. The number and identity of Tiger customers who have had charges "reversed" by
10 PG&E.

11 49. PG&E's EDI files frequently contain intentionally false representations to Tiger
12 about the status of its customer accounts, including representations that certain customers have not
13 paid Tiger's charges, when those customers actually are current.

14 50. PG&E sends the EDI files using interstate wires; that is, PG&E typically attaches the
15 file or a link to a file-share site to an email that is sent over the internet from California to Tulsa,
16 Oklahoma.

17 51. Tiger relies on the data and representations of PG&E contained in the EDI files.
18 When it does not receive payments from PG&E for its customers, Tiger may contact the customer
19 regarding the delinquency.

20 52. Often, however, the customers state that they have fully paid their energy bill to
21 PG&E, including all of Tiger's gas charges.

22 53. For these customers, PG&E's EDI files, sent over the internet from California to
23 Tulsa, Oklahoma, and which show that the customer has not made the required payments for
24 Tiger's commodity gas charges, contain intentionally false and misleading information and also fail
25 to disclose material information about Tiger's customer accounts.

26 54. For example, PG&E has used transmission over the internet to falsely report the
27 status of the following accounts to Tiger:

- 28 a. By EDI file transmitted on or about March 7, 2011, PG&E notified Tiger of a

1 delinquency for customer I. Smith (SAID *3870). PG&E continued to notify Tiger of on-
 2 going delinquencies by this customer on a daily basis until October 15, 2014, or over 1,000
 3 such occurrences. In fact, the customer had paid in full, and PG&E had simply withheld
 4 payment to Tiger. Indeed, Tiger attempted to verify the status of this account with PG&E on
 5 October 15, 2013, February 25, 2014, and March 14, 2014, without receiving any
 6 substantive information from PG&E. On August 27, 2014, Jennifer Yee, a subordinate of
 7 the Individual Defendants stated, over interstate wire, that the customer had made “partial
 8 payments.” This statement was false when made and, in fact, the customer had made
 9 consistent and timely payments. On or about October 15, 2014, Tiger disconnected this
 10 customer based on false information provided by PG&E.

11 b. By EDI file transmitted on or about April 2, 2015, PG&E notified Tiger of a
 12 delinquency for Kyle W. (SAID *6681). PG&E continued to notify Tiger of on-going
 13 delinquencies by this customer on a daily basis until July 2, 2015, or about 90 such
 14 occurrences. In fact, the customer had timely paid his bill each month and PG&E showed no
 15 outstanding balance. Shortly thereafter, Tiger disconnected the customer for non-payment.
 16 “Manuel,” an employee in PG&E’s customer care, told the customer that PG&E had timely
 17 remitted each of his payments to Tiger, which was false when made. In addition, PG&E’s
 18 customer care used the call opportunity occasioned by its false and misleading bills, as well
 19 as the disconnection occasioned by PG&E’s false and misleading EDI files sent to Tiger, to
 20 falsely tell the customer that Tiger costs 60% more than PG&E.

21 c. By EDI file transmitted on or about June 30, 2015, PG&E notified Tiger of a
 22 delinquency for Paul B. (SAID *1010). PG&E continued to notify Tiger of these
 23 delinquencies until July 21, 2015 and, in fact, backdated several hundred dollars of
 24 transactions to June 24, 2014. On August 7, 2015, Tiger, in reliance on PG&E’s false
 25 statements, sent the customer a collection letter for non-payment. The customer supplied
 26 copies of his PG&E bills showing payment in full and then disconnected from Tiger,
 27 reverting back to PG&E’s gas service.

28 d. By EDI file transmitted on or about June 20, 2013, PG&E notified Tiger of a

1 delinquency for customer City of M. (SAID *9520). PG&E continued to notify Tiger of on-
2 going delinquency by this customer on a daily basis until July 20, 2016. That is, PG&E sent
3 over 1,000 EDI files indicating that this customer was delinquent. PG&E's statements were
4 false when made because the customer had, in fact, timely made all payments to PG&E.
5 Alternatively, each of the EDI files sent to Tiger stated that this account had not paid when,
6 in fact, PG&E had applied an energy credit on the customer's bills, indicating to the
7 customer that no payment to Tiger was due.

8 e. By EDI file transmitted on or about September 4, 2014, PG&E notified Tiger of a
9 delinquency for customer City of M. (SAID *9115). PG&E continued to notify Tiger of on-
10 going delinquency by this customer on a daily basis until September 2, 2016. That is, PG&E
11 sent over 1,000 EDI files indicating that this customer was delinquent. PG&E's statements
12 were false when made because the customer had, in fact, timely made all payments to
13 PG&E. Alternatively, each of the EDI files sent to Tiger stated that this account had not paid
14 when, in fact, PG&E had applied an energy credit on the customer's bills, indicating to the
15 customer that no payment to Tiger was due.

16 f. By EDI file transmitted on or about March 14, 2013, PG&E notified Tiger of a
17 delinquency for customer County of S. C. (SAID *5075). PG&E continued to notify Tiger
18 of on-going delinquency by this customer on a daily basis until March 17, 2016. That is,
19 PG&E sent over 1,000 EDI files indicating that this customer was delinquent. PG&E's
20 statements were false when made because the customer had, in fact, timely made all
21 payments to PG&E. Alternatively, each of the EDI files sent to Tiger stated that this account
22 had not paid when, in fact, PG&E had applied an energy credit on the customer's bills,
23 indicating to the customer that no payment to Tiger was due.

24 g. By EDI file transmitted on or about September 8, 2014, PG&E notified Tiger of a
25 delinquency for customer E.R. Mobile Home Park (SAID *1005). PG&E continued to
26 notify Tiger of on-going delinquency by this customer on a daily basis until March 30, 2015.
27 That is, PG&E sent over 200 EDI files indicating that this customer was delinquent.
28 PG&E's statements were false when made because the customer had, in fact, timely made

1 all payments to PG&E. Alternatively, each of the EDI files sent to Tiger stated that this
 2 account had not paid when, in fact, PG&E had applied an energy credit on the customer's
 3 bills, indicating to the customer that no payment to Tiger was due.

4 h. By EDI file transmitted on or about May 8, 2014, PG&E notified Tiger of a
 5 delinquency for customer County of S.J. (SAID *0150). PG&E continued to notify Tiger of
 6 on-going delinquency by this customer on a daily basis until September 16, 2015. That is,
 7 PG&E sent over 450 EDI files indicating that this customer was delinquent. PG&E's
 8 statements were false when made because the customer had, in fact, timely made all
 9 payments to PG&E. Alternatively, each of the EDI files sent to Tiger stated that this account
 10 had not paid when, in fact, PG&E had applied an energy credit on the customer's bills,
 11 indicating to the customer that no payment to Tiger was due.

12 55. Tiger has cancelled hundreds of its customer accounts for non-payment based on
 13 false information about the status of payments received from PG&E.

14 56. Many of these cancelled accounts had fully paid for the natural gas provided by
 15 Tiger, but PG&E did not provide those funds to Tiger, creating the impression that the customers
 16 had not paid the appropriate charges when, in fact, the customers had remitted to PG&E either the
 17 full or partial amount due for Tiger's charges.

18 57. Tiger has otherwise continued to supply gas to PG&E for Tiger's active customers—
 19 including those detailed in Paragraphs 54a-h, above—not knowing that PG&E's accounting
 20 methods either failed to properly bill Tiger's customers for the gas or failed to properly credit to
 21 Tiger payments received from such customers. In effect, PG&E's Payment Withholding Scheme
 22 dures Tiger into supplying gas to PG&E, which PG&E holds and uses knowing that its accounting
 23 methods ensure that Tiger will not be paid in full for such gas.

24 58. PG&E's Payment Withholding Scheme additionally benefits PG&E because Tiger
 25 must pay PG&E transportation and storage fees, which are based on the volume of gas Tiger
 26 provides for its customers. The transportation and storage fees become stranded costs as a result of
 27 the Schemes set forth in this Complaint, since the Schemes prevent Tiger from recouping these
 28 costs from the affected customers. These fees are significant: Tiger pays PG&E over \$180,000.00

1 per month in transportation fees alone.

2 59. In other words, PG&E has engaged in a pattern and practice of intentionally
3 withholding money from Tiger that PG&E received from Tiger customers for natural gas delivered
4 by Tiger. PG&E benefits from its deception regardless of the action taken by Tiger. If Tiger cancels
5 the customers' accounts for non-payment, these customers revert back to PG&E for their natural-
6 gas service. If Tiger does not cancel, PG&E continues to receive Tiger's gas without paying for it
7 and continues to charge Tiger to transport and store the gas.

8 60. Citing its customer confidentiality policies, PG&E refuses to provide information
9 related to the payment status of Tiger's customers. PG&E only tells Tiger the amount of money
10 PG&E has elected to apportion to Tiger. Tiger must trouble the customer for any other information,
11 such as the amount paid to PG&E or how PG&E has credited the customer's balance.

12 61. In other words, having unlawfully kept money owed to Tiger and perpetuated a
13 scheme to engender cancellations from Tiger (for alleged non-payment) or to appropriate free gas
14 and storage/transportation fees, PG&E affirmatively prevents Tiger from uncovering the scheme by
15 citing "customer privacy" concerns.

16 **PG&E's Energy Credit Scheme**

17 62. PG&E engages in a pattern and practice of offsetting Tiger's customers' charges for
18 natural gas delivered to Tiger's customers with credits from non-Tiger related charges.

19 63. Neither the parties' contract nor the Gas Rules permit PG&E to offset PG&E's
20 customer credit structure with amounts owed to Tiger.

21 64. For example, PG&E offers its customers certain subsidies and credits for obtaining
22 some of their electricity through solar panels and similar renewable energy programs. PG&E
23 improperly applies these credits to Tiger's gas commodities charges, such that the customer sees
24 either that no payment is due for the month or that an amount is due that will not cover Tiger's
25 charges.

26 65. In other words, PG&E accepts gas from Tiger for these customers and delivers gas to
27 these customers on Tiger's behalf, but informs the customer that s/he does not need to pay any
28 amount because of an applied credit. Effectively, PG&E defrauds Tiger of its gas and uses it to

1 subsidize its customer credit programs.

2 66. Some specific instances of this conduct include:

3 a. By EDI file transmitted on or about January 23, 2015, PG&E notified Tiger that it
4 had billed Sareth R. (SAID *3593) for Tiger's gas commodity charges. In fact, PG&E had
5 applied an energy credit, indicating to the customer that he owed Tiger nothing. By EDI
6 files transmitted daily on or about August 24, 2015, PG&E similarly notified Tiger that it
7 had continued to bill and was attempting to collect Tiger's charges when in reality PG&E's
8 bills informed the customer that the customer owed nothing due to operation of the energy
9 credit. Tiger disconnected this customer, relying on PG&E's false statements and returning
10 the account to PG&E's default gas service.

11 b. By EDI file transmitted on or before September 15, 2015, PG&E notified Tiger that
12 it had billed customer Richard S. (SAID *3010) for Tiger's gas commodity charges. In fact,
13 PG&E had applied an energy credit, indicating to the customer that he owed Tiger nothing.
14 Until August 15, 2016, PG&E similarly sent Tiger daily EDI files stating that it had billed
15 and was attempting to collect Tiger's charges, when in reality PG&E's bills informed the
16 customer that he owed nothing due to operation of the energy credit. In total, PG&E
17 transmitted a total of over 330 false and misleading EDI files. On or about April 13, 2016,
18 Tiger disconnected this customer, relying on PG&E's false statements and returning the
19 account to PG&E's default gas service.

20 c. By EDI file transmitted on or about June 26, 2012, PG&E notified Tiger that it had
21 billed an account for the City of M. (SAID *9615) for Tiger's gas commodity charges. In
22 fact, PG&E had applied an energy credit, indicating to the customer that it owed Tiger
23 nothing. By EDI files transmitted daily to the present day, PG&E similarly has notified
24 Tiger that it had again billed and was attempting to collect Tiger's charges when in reality
25 PG&E's bills inform the customer that it owes nothing due to operation of the energy credit.
26 In total, PG&E transmitted literally thousands of false and misleading EDI files to Tiger.

27 d. By EDI file transmitted on or about April 23, 2015, PG&E notified Tiger that it had
28 billed John L. (SAID *1015) for Tiger's gas commodity charges. In fact, PG&E had applied

1 an energy credit, indicating to the customer that he owed Tiger nothing. By EDI files
2 transmitted daily until April 11, 2016, PG&E similarly notified Tiger that it had again billed
3 and was attempting to collect Tiger's charges when in reality PG&E's bills informed the
4 customer that he owed nothing due to operation of the energy credit. In total, PG&E
5 transmitted approximately 340 false and misleading EDI files to Tiger.

6 67. In each case set forth above, PG&E's EDI file informed Tiger that it billed and was
7 attempting to collect Tiger's gas commodity charges when, in fact, PG&E had applied a credit such
8 that the customer was told not to pay Tiger anything. Further, PG&E's EDI file informed Tiger that
9 the customer was not paying Tiger's gas commodity charges when, in fact, PG&E had induced the
10 unwitting customer into not paying Tiger.

11 68. Tiger has cancelled thousands of its customer accounts for non-payment based on
12 false information about the status of payments received from PG&E.

13 69. Tiger has otherwise continued to supply gas to PG&E for Tiger's active customers—
14 including those detailed in Paragraphs 66a-d, above—not knowing that PG&E had not only failed
15 to bill the customer but also affirmatively told the customer that s/he need not pay Tiger for its
16 services. In effect, PG&E's Energy Credit Scheme dupes Tiger into supplying gas to PG&E, which
17 PG&E holds and uses knowing that its accounting methods ensure that Tiger will not be paid for
18 such gas and reducing the amount of credit that PG&E owes to the customer.

19 70. PG&E's Energy Credit Scheme additionally benefits PG&E because Tiger must pay
20 PG&E transportation and storage fees, which are based on the volume of gas Tiger provides for its
21 customers. The transportation and storage fees become stranded costs as a result of the Schemes set
22 forth in this Complaint, since the Schemes prevent Tiger from recouping these costs from the
23 affected customers. These fees are significant: Tiger pays PG&E over \$180,000 per month in
24 transportation fees alone.

71. In other words, PG&E has engaged in a pattern and practice of intentionally using
72. Tiger's gas and gas commodity charges to underwrite PG&E's energy credit program. PG&E's
73. Energy Credit Scheme also caused Tiger to cancel customers (for alleged non-payment). These
74. customers then default to PG&E's gas commodity service.

1 72. Citing its unlawful and unregulated customer confidentiality policies, PG&E refuses
 2 to provide information related to the payment status of Tiger's customers. That is, PG&E will only
 3 tell Tiger the amount of money PG&E has elected to apportion to Tiger. Tiger must trouble the
 4 customer for any other information, such as the amount paid to PG&E or how PG&E has credited
 5 the customer's balance.

6 73. In other words, having kept money owed to Tiger and perpetuated a scheme to
 7 engender either cancellations from Tiger (for alleged non-payment) or free gas from Tiger (when
 8 Tiger continues to supply the customer), PG&E affirmatively prevents Tiger from uncovering the
 9 scheme by citing "customer privacy" concerns.

10 **The Reversal Scheme**

11 74. PG&E has engaged in a pattern and practice of withholding amounts due to Tiger
 12 where PG&E claims that the funds are due for "reversals."

13 75. PG&E's EDI files contain information showing which accounts have "reversed."

14 76. Some specific examples of this include:

15 a. By EDI file transmitted on or about March 15, 2016, PG&E represented that it had
 16 billed Richard S. (SAID *3010) \$9.35 for Tiger's services, with a purported (but likely
 17 fraudulent) balance of \$116.46. By EDI file sent on or about March 15, 2016, PG&E
 18 informed Tiger that it "reversed" previous customer payments in the amount of \$46.90,
 19 \$38.75, \$29.78, \$27.71, \$27.38, \$18.36, \$18.26, \$15.46, \$12.78, \$11.46, \$9.75, \$7.20, \$6.82,
 20 \$6.74, \$6.16, \$6.07, \$5.88, \$5.09, \$4.96, \$4.76, \$4.74, \$4.71, \$4.62, \$4.57, \$4.46, \$4.46,
 21 \$4.40. That same day, PG&E applied payments in the amount of \$1.73, \$4.40, \$4.46, \$4.57,
 22 \$4.71, \$4.74, \$4.76, \$5.09, \$6.74, \$6.82, \$12.78, \$15.46, \$18.26, \$18.36, \$27.71, \$29.78,
 23 leaving a balance *after* application of payments of \$288.32. On or about April 13, 2016,
 24 Tiger disconnected this customer, relying on PG&E's false statements and returning the
 25 account to PG&E's default gas service. Nevertheless, PG&E continued to apply and reverse
 26 these amounts on April 14, 2016, May 14, 2016, June 14, 2016, July 15, 2016, and August
 27 15, 2106, reporting false balances to Tiger on a daily basis.

28 b. By EDI file transmitted on or about May 24, 2015, PG&E represented that it had

1 billed Sareth R. (SAID *3593) \$6.94 for Tiger's services, with a purported (but likely
2 fraudulent) balance of \$36.79. By EDI file sent on or about May 27, 2015, PG&E informed
3 Tiger that it "reversed" previous customer payments in the amount of \$41.33, \$34.24,
4 \$31.60, \$11.91, and \$11.01. That same day, PG&E applied payments in the amount of
5 \$11.01, \$11.91, \$31.60, \$34.24, and \$41.33 leaving a balance *after* application of payments
6 of \$36.79. PG&E continued to apply and reverse these and other amounts on June 24, 2015,
7 July 23, 2015, August 24, 2015, September 23, 2015, October 26, 2015, and periodically
8 thereafter, reporting false balances to Tiger on a daily basis. On or about August 24, 2015,
9 Tiger disconnected this customer, relying on PG&E's false statements and returning the
10 account to PG&E's default gas service.

11 c. By EDI file transmitted on or about August 7, 2014, PG&E represented that it had
12 billed E.R. Mobile Home Park (SAID *1005) \$1,060.86 for Tiger's services, with a
13 purported balance of \$1,060.86. By EDI file sent on or about August 11, 2014, PG&E
14 informed Tiger that it "reversed" previous customer payments in the amount of \$11,647.19,
15 \$3,172.71, \$2,750.35, \$640.72, and \$466.36. That same day, PG&E applied payments in the
16 amount of \$11,647.19, \$3,172.71, \$2,750.35, \$640.72, and \$466.36. PG&E made additional
17 reversals on that day in the amount of \$7,299.88 and \$4,918.88. PG&E also applied
18 additional payments on that same day in the amount of \$91.61, \$256.12, \$347.53,
19 \$4,918.88, and \$7,299.88. PG&E continued to apply and reverse these and other amounts on
20 this account on September 8, 2014, October 8, 2014, November 5 and 18, 2014, and
21 December 6, 2014, causing large swings in the balances reported by PG&E.

22 77. In December 2014, PG&E permanently “reversed” thousands of Tiger’s customers,
23 representing about \$47,635.00 in reversals. In February 2015, PG&E “reversed” another
24 \$30,000.00 worth of customers. Further, Tiger has identified thousands of accounts that PG&E has
25 either reversed or disconnected to itself without notice to Tiger.

26 78. Similar to some of the examples in Paragraphs 76a-c, PG&E backdated many of
27 these reversals, as though the reversal had occurred months beforehand

28 79. According to the EDI files sent by PG&E many of the customers reversed by PG&E

1 had made payments in the prior months.

2 80. PG&E has provided no explanation for this practice, and neither the contract
3 between the parties nor the Gas Rules permit it.

4 81. PG&E's EDI files showing a reversal falsely informed Tiger that these customers
5 had "reversed," when in fact, they had not.

6 82. Alternatively, PG&E's EDI files showing payments were false because they stated
7 that the customer had paid Tiger's charges when, in fact, the customer had not.

8 83. PG&E's actions have damaged Tiger by eroding its customer base, denying it
9 current and future revenue. PG&E's actions have also damaged Tiger by disrupting its cash flow,
10 which impacts nearly every aspect of its business. For example, Tiger cannot accurately project
11 revenue or manage its credit facilities when PG&E mercurially reverses customers or offsets
12 payments. The Schemes similarly interfere with Tiger's relationship with its customers, who
13 become understandably angry and frustrated when their bills do not accurately reflect the balance
14 owed to Tiger, resulting in significant additional expenses and penalties imposed on Tiger.

15 84. The Schemes also render near impossible Tiger's ability to perform basic business
16 functions, such as determining and reporting bad debt because the Schemes conceal from Tiger
17 which balances have been paid (but not remitted to Tiger), which customers have been told not to
18 pay Tiger at all (due to the Energy Credit Scheme) and which accounts and payments have been
19 unlawfully reversed back to PG&E (the Reversal Scheme).

20 85. The Schemes, moreover, diminish competition within the gas commodity market as
21 a whole. Between 2012 and 2014—before full implementation of the Schemes—the firm pipeline
22 capacity (or "load") for all CTAs grew from approximately 12% share of the total load to
23 approximately 19%. Since implementation of the Schemes, however, the load has steadily and
24 precipitously decreased to 15.4% of the total load.

25 86. Further, the Schemes have resulted in increased consumer prices despite an ample
26 supply of natural gas and despite decreasing wholesale prices. Between 2014 and present, the
27 monthly California price of natural gas delivered to residential consumers has *increased* from \$10
28 per thousand cubic feet to \$12 per thousand cubic feet. During that same time period, the Citygate

1 price for natural gas in California has *decreased* from approximately \$6.00 per thousand cubic feet
2 to approximately \$3.00 per thousand cubic feet. In other words, consumers in California are paying
3 20% more for natural gas since implementation of the Schemes even though the Citygate price is
4 50% less than it was in 2014.

5 87. Perhaps more important, the Schemes prohibit customers from participating in
6 alternative products, such as fixed price, unlimited usage pricing, winter fixed rates, and guaranteed
7 lower summer rates.

8 88. PG&E, as a corporation, does not acknowledge the Schemes. For example, on April
9 30, 2015, David Reyes (Defendant Robinson's subordinate) admitted in testimony, with PG&E's
10 in-house counsel present, the facts underlying the Energy Credit Scheme (i.e., that non-cash credits
11 are used to "mask" a CTA's charges). The day before, on April 29, 2015, PG&E's in-house counsel
12 averred to the CPUC that PG&E does *not* apply non-cash credits to a CTA's charges. PG&E's in-
13 house counsel have taken no steps to correct or reconcile either statement.

14 89. Even after its own employee testified about the Schemes, PG&E has done little or
15 nothing to curtail the unlawful acts of the Individual Defendants. PG&E profits from these acts in
16 several ways: by charging Tiger transportation and storage fees; by increasing the bad debt of its
17 competitors; and by reducing its own liability for mandatory credits. Finally, PG&E is able to
18 charge consumers higher prices despite the falling Citygate cost of natural gas.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the Racketeer and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968)

21 90. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1
22 through 89 of this Complaint.

FACTUAL ALLEGATIONS COMMON TO ALL RICO COUNTS

RICO COUNT I
(Violation of RICO § 1962(c))

91. The allegations of paragraphs 1 through 90 are incorporated herein by reference.

26 92. This Count is against Defendants Torres, Robinson, and Chen (the "Count I
27 Defendants").

93. Consolidated Billing is an enterprise engaged in and whose activities affect

1 interstate commerce. The Count I Defendants engaged in the predicate act of wire fraud by way of
 2 the Payment Withholding Scheme, the Energy Credit Scheme and the Reversal Scheme in
 3 furtherance of the Consolidated Billing enterprise.

4 94. The Count I Defendants are employed by or associate with the enterprise.

5 95. The Count I Defendants agreed to and did conduct and participate in the conduct of
 6 the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of
 7 intentionally defrauding the Plaintiff.

8 96. Specifically, Defendant Robinson directs her department to provide Tiger with the
 9 Electronic Data Interchange ("EDI") files containing the false information as detailed in Paragraphs
 10 54, 66 and 76. Defendant Robinson directs her department to transmit this false information through
 11 interstate wires (i.e., over the internet and telephone network) to Tiger in Tulsa, Oklahoma.
 12 Defendant Robinson further directs her department to deceive Tiger when it enquires about these
 13 schemes.

14 97. Defendant Torres oversees and directs the employees in Customer Operations to
 15 withhold payments from Tiger, as described *supra* in Paragraphs 54, 66 and 76. Defendant Torres
 16 similarly directs the employees in Customer Operations to apply PG&E energy credit programs
 17 (e.g., for solar panels, etc.) to Tiger's charges, as described *supra* in Paragraph 66. Defendant
 18 Torres directs the employees in Customer Operations to apply reversals in the manner described in
 19 Paragraph 76. Finally, Defendant Torres directs the employees in Customer Operations to use
 20 customer care calls originating from the Payment Withholding Scheme and the Energy Credit
 21 Scheme to inform Tiger customers that they do not and will never pay less with Tiger's services and
 22 to convince the customer to drop Tiger.

23 98. Defendant Chen oversees and manages the CTA program. Defendant Chen manages
 24 and implements the Payment Withholding Scheme, the Energy Credit Scheme, and the Reversal
 25 Scheme. Specifically, Defendant Chen directs and coordinates these schemes between Defendant
 26 Robinson and Defendant Torres.

27 99. The Payment Withholding Scheme, the Energy Credit Scheme, and the Reversal
 28 Scheme constitute wire fraud in violation of 18 U.S.C. § 1343. Specifically, each of these Schemes

1 concern the transmission of false information in the EDI files, with the intent of either withholding
2 payments from Tiger, defrauding Tiger of its gas commodity to subsidize PG&E's customer credit
3 program, or reducing Tiger's customer base.

4 100. The Payment Withholding Scheme, the Energy Credit Scheme, and the Reversal
5 Scheme involve use of interstate wires (i.e., the internet) to transmit the EDI files to Tiger.

6 101. The Count I Defendants have evidenced specific intent to defraud Tiger because the
7 practical effect of the Schemes is that the customer defaults to PG&E's gas commodity service. The
8 Count I Defendants have similarly evidenced specific intent to defraud Tiger because another
9 practical effect of the Schemes is to withhold money from Tiger or to subsidize PG&E's other
10 business units. Finally, the Count I Defendants evidence shows specific intent to defraud Tiger
11 since they have undertaken efforts to conceal the Schemes.

12 102. The acts set forth above constitute a pattern of racketeering activity pursuant to 18
13 U.S.C. § 1961(5).

14 103. This pattern poses the threat of continuing. The first predicate act of the Reversal
15 Scheme, for example, dates back to 2013 and continues through today. The Count I Defendants
16 deploy the Payment Withholding Scheme and the Energy Credit Scheme each month with Tiger's
17 customers via transmission of the false EDI files.

18 104. As a direct and proximate result of the Count I Defendants' racketeering activities
19 and violations of 18 U.S.C. § 1962(c), Tiger has been injured in its business and property in that the
20 Count I Defendants defraud Tiger of money or gas commodities and have eroded Tiger's customer
21 base.

22 105. WHEREFORE, Plaintiff requests that this Court enter judgment against the Count I
23 Defendant(s) as follows:

24 a. Actual damages in an amount to be proven at trial, but estimated to be in the millions of
25 dollars;

26 b. Treble damages and attorneys' fees and costs as provided in 18 U.S.C. § 1964(c); and

27 c. Any other relief the Court determines is appropriate.

28

RICO COUNT II
(Violation of RICO § 1962(d))

106. The allegations of paragraphs 1 through 105 are incorporated herein by reference.

107. This Count is against Defendants Torres, Robinson, and Chen (the “Count II Defendant(s)”).

108. As set forth above, the Count II Defendants agreed and conspired to violate 18 U.S.C. § 1962(c).

109. The Count II Defendants have intentionally conspired and agreed to directly and indirectly conduct and participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

110. The Count II Defendants knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above. That conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d).

111. As a direct and proximate result of the Count II Defendants' conspiracy to commit racketeering activities and violations of 18 U.S.C. § 1962(c), Tiger has been injured in its business and property in that the Count II Defendants defrauded Tiger of money or gas commodities and have eroded Tiger's customer base.

112. WHEREFORE, Plaintiff requests that this Court enter judgment against the Count II Defendants as follows.

- a. Actual damages in an amount to be proven at trial, but expected to be in the millions of dollars;
- b. Treble damages and attorneys' fees and costs as provided in 18 U.S.C. § 1964(c); and
- c. Any other relief the Court determines is appropriate.

**SECOND CAUSE OF ACTION
(Respondeat Superior/Agency)**

113. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1

1 through 112 of this Complaint.

2 114. PG&E is distinct from the Consolidated Billing RICO enterprise operated by
 3 Robinson, Chen, and Torres (the “Individual Defendants”). Specifically, Consolidated Billing is not
 4 part of PG&E’s voluntary business model nor is it intended to be a profitable line of business.
 5 Indeed, PG&E neither officially condones nor acknowledges the existence of the Schemes. PG&E
 6 officially denies, for example, the existence of the Energy Credit Scheme (as its in-house lawyers
 7 did on April 29, 2015 in their averments before the CPUC), even though the Individual Defendants
 8 and their employees openly acknowledge the practice and despite the fact that PG&E benefits from
 9 it.

10 115. PG&E has benefited from the racketeering activities of the Individual Defendants.
 11 PG&E charges Tiger transportation and storage fees for natural gas. The Schemes increase the bad
 12 debt of PG&E’s competitors and increase PG&E’s market share for core gas customers. Most
 13 important, the Schemes reduce PG&E’s own liability for any mandatory credit. Finally, as a result
 14 of the Schemes, PG&E is able to charge consumers higher prices than it otherwise could, even
 15 while the Citygate cost of natural gas falls.

16 116. The Individual Defendants committed the racketeering activities within the time and
 17 space limits of their employment with PG&E. That is, the Individual Defendants committed the
 18 racketeering activities while they were working in PG&E’s offices and with PG&E’s systems. On
 19 information and belief, the Individual Defendants were motivated to commit the racketeering
 20 activities for the purpose of benefiting PG&E financially through increased profit and market share,
 21 and thereby benefiting themselves as the employees responsible.

22 117. The racketeering activities were of a kind that the Individual Defendants were hired
 23 by PG&E to perform legitimately. That is, each Individual Defendant used his/her position at
 24 PG&E to perpetuate the Schemes by committing the predicate acts under the auspices of their usual
 25 job responsibilities. For example, Defendant Torres oversees the employees in Customer Operations
 26 but directs them to withhold payments from Tiger in furtherance of the Payment Withholding
 27 Scheme, as described *supra* in Paragraphs 54, 66 and 76. Defendant Torres similarly oversees the
 28 employees in Customer Operations but directs them to apply PG&E energy credit programs (e.g.,

1 for solar panels, etc.) to Tiger's charges in furtherance of the Energy Credit Scheme, as described
2 *supra* in Paragraph 66. Defendant Torres also directs the employees in Customer Operations to
3 apply reversals in the manner described in Paragraph 76 in furtherance of the Reversal Scheme.
4 Finally, Defendant Torres directs the employees in Customer Operations to use customer care calls
5 to inform Tiger customers that they do not and will never pay less with Tiger's services and to
6 convince the customer to drop Tiger, in furtherance of the Payment Withholding Scheme and the
7 Energy Credit Scheme. Similarly, Defendants Robinson and Chen direct the employees in ESP
8 Services and EDI Operations to compile and send the EDI files over the wires containing the false
9 information set forth in Paragraphs 54, 66 and 76. None of the Individual Defendants would be
10 able to perpetuate the Schemes without the authority vested in them through their positions at
11 PG&E.

12 118. PG&E eventually learned of the Schemes, as evidenced by the presence of its in-
13 house counsel during the testimony of David Reyes on April 30, 2015 but, nonetheless, does
14 nothing to stop them. As their employer, PG&E not only supplied the Individual Defendants with
15 the means to perpetuate the Schemes, but PG&E could have stopped the Individual Defendants and,
16 to date, has not done so.

17 119. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as
18 follows:

- 19 a. Actual damages in an amount to be proven at trial, but expected to be in the millions
20 of dollars;
- 21 b. Treble damages and attorneys' fees and costs as provided in 18 U.S.C. § 1964(c);
22 and
- 23 c. Any other relief the Court determines is appropriate.

24 **THIRD CAUSE OF ACTION**

25 **(Attempt to Monopolize in Violation of the Sherman Act § 2, 15 U.S.C. § 2)**

26 120. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1
27 through 119 of this Complaint.

28 121. A market exists for the provision of natural gas to Core Customers in Northern

1 California. The geographical boundaries of this market are Eureka in the north to Bakersfield in the
 2 south, and from the Pacific Ocean to the Sierra Nevada (the “Relevant Geography”). Core
 3 Customers are all residential customers within the Relevant Geography regardless of load size,
 4 commercial customers with annual loads below 250,000 therms, and those commercial customers
 5 with annual loads above 250,000 therms who elect to receive the higher reliability associated with
 6 core service. The relevant product in this market is natural gas, which is a fossil fuel extracted from
 7 the earth and largely comprised of methane and other hydrocarbons. The natural gas sold to
 8 residential and small business customers for use as an energy source is fungible, may be
 9 interchanged regardless of the provider, and is not distinguishable by quality. It can be used for
 10 heating, cooking, and other household applications.

11 122. PG&E is the traditional utility and, until 1991, held a state sanctioned monopoly in
 12 the Relevant Geography. Consequently, PG&E currently owns and operates all the infrastructure
 13 that physically stores and transports natural gas to Core Customers within the Relevant Geography.
 14 As a result of this monopoly, 100% of the Core Customers receive their gas via pipes, meters, and
 15 other facilities owned and operated by PG&E.

16 123. PG&E also holds a near monopoly on natural gas billing and collections operations
 17 within the Relevant Geography. Nearly 100% of the Core Customers in the Relevant Geography
 18 receive a monthly utility bill from PG&E, whether for natural gas, the transportation of those
 19 services, or both.

20 124. The CTAs compete with PG&E to sell natural gas to Core Customers within the
 21 Relevant Geography. Approximately twenty-two CTAs operate in the Relevant Geography using
 22 PG&E’s infrastructure.

23 125. Recognizing that establishing utility billing and collection services created an unfair
 24 barrier to entry, the CPUC requires PG&E to share its billing and collection services with CTAs.
 25 Approximately 18 CTAs use PG&E as their billing and collections agents (i.e., those CTAs use
 26 PG&E Consolidated Billing), paying PG&E about \$.70 per customer per month for this service. No
 27 CTA retails to all Core Customers (i.e., both residential and small commercial) without using
 28 PG&E Consolidated Billing. A CTA like Tiger cannot practically or reasonably establish its own

1 billing and collection services within the Relevant Geography and continue to offer natural gas to
 2 Core Customers at competitive prices. Thus, without the use of PG&E's billing and collections
 3 services, CTAs like Tiger cannot compete with PG&E in the natural gas market. Consequently,
 4 PG&E's billing and collections services constitute an essential facility. Though the CPUC has
 5 compelled PG&E to share its billing and collection services, the CPUC lacks the effective power to
 6 regulate the scope, terms, and manner in which those services are provided to CTAs and has failed
 7 to prevent the predatory Schemes from occurring.

8 126. Because the number of Core Customers varies and their individual gas usage is
 9 difficult to encapsulate, an entity's given market share is typically measured in terms of "load"—
 10 the percentage of the overall natural gas demand in the Relevant Geography the entity supplies. In
 11 2012, PG&E supplied 88% of the total load to Core Customers in the Relevant Geography, while
 12 all CTAs combined supplied 12%. By 2014, the CTAs increased their market share to 19%, while
 13 PG&E's share decreased to 81% of the total load to Core Customers in the Relevant Geography.
 14 Since implementation of the Schemes, however, PG&E has augmented its market share to 85%.

15 127. PG&E sets the price for its natural gas to Core Customers on a monthly basis by
 16 application of a regulated formula. While the formula itself does not change, PG&E exercises
 17 discretion over variables, such as calculation of its purchase price, expenses, overcharges, and the
 18 like, to include in the formula. PG&E publishes this price once per month, typically around the
 19 twenty-fifth day, without prior approval from the CPUC. CTAs using PG&E's billing and
 20 collections must provide their monthly price to PG&E by the first of each month.

21 128. PG&E has committed overt predatory and exclusionary acts demonstrating its
 22 specific intention to destroy competition for natural gas commodity service to Core Customers in
 23 the Relevant Geography by providing its billing and collections services in a fraudulent, unfair,
 24 unreasonable, and discriminatory manner, denying the CTAs fair and reasonable access to an
 25 essential facility. Specifically, PG&E uses its role as the CTAs' billing agent to withhold money
 26 due and owing to the CTAs by operation of the acts set forth in the Payment Withholding Scheme,
 27 which misleads the CTA into believing that the customer is not paying. The Energy Credit Scheme
 28 deceives both the customer into believing that no payment is due to the CTA and the CTA into

1 believing that the customer willfully is not paying. The CTAs, including Tiger, either disconnect
 2 these customers, defaulting them back to PG&E's gas commodity service, or attempt collection
 3 efforts which frustrate the customer into returning to PG&E's service. Finally, with the Reversal
 4 Scheme, PG&E simply disconnects Core Customers within the Relevant Geography from the
 5 CTAs' natural gas service and returns them to PG&E's natural gas service. These fraudulent, unfair,
 6 unreasonable, and discriminatory Schemes lack any legitimate business justification and evidence
 7 PG&E's specific intent to destroy competition in the natural gas market. Such Schemes are
 8 perpetrated against the CTAs not by competitive zeal, but by anticompetitive malice.

9 129. PG&E, therefore, intentionally leverages its monopoly in its billing and collections
 10 services to expand its market share in the deregulated natural gas commodity market to Core
 11 Customers.

12 130. The Schemes have several anti-competitive results. First, the Schemes significantly
 13 increase operating expenses for CTAs. For example, CTAs must expend large sums—typically
 14 millions of dollars annually—on marketing costs just to maintain their customer base as a result of
 15 the Reversal Scheme. Quite literally, the Schemes eliminate the CTAs customer base nearly as
 16 quickly as a CTA, spending millions of dollars each year, can build it up. CTAs have no ability to
 17 expand their output.

18 131. In addition, CTAs have large carrying costs because the Payment Withholding
 19 Scheme and the Energy Credit Scheme ensure that the CTA will be either paid months late or not at
 20 all (that is, the CTAs must buy the natural gas and expend money storing and transporting it while
 21 PG&E prohibits payment from the customer).

22 132. The Schemes are perpetuated against all CTAs using PG&E's billing and collections
 23 services and have resulted in significant loss of the CTA's market share and increased costs to the
 24 CTAs. Tiger alone has lost about half of its customers as a result of the Schemes. On May 28, 2016,
 25 another competitor, United Energy Trading, LLC filed a Complaint in the Northern District of
 26 California (styled *United Energy Trading, LLC v. Pacific Gas and Electric Co., et al.*, Case No.
 27 3:15-cv-02383-RS) alleging, *inter alia*, that it also lost tens of thousands from its peak of 65,000
 28 Core Customers in the Relevant Geography as a result of the Schemes. On June 9, 2016, another

1 competitor, North Star Gas Company d/b/a YEP, filed a Complaint in the Northern District of
 2 California (styled *North Star Gas Co. v. Pacific Gas and Electric Co., et al.*, Case No. 3:15-CV-
 3 02575-HSG) alleging, *inter alia*, that it has similarly lost tens of thousands from its peak of 54,000
 4 Core Customers in the Relevant Geography as a result of the Schemes. Similarly, other CTAs, such
 5 as Vista Energy, have reported that PG&E carries out the Schemes against their Core Customers in
 6 the Relevant Geography and that, similar to Tiger, United Energy and North Star, each CTA has
 7 reported loss of customer and market share.

8 133. In short, the Schemes drive up the CTAs' expenses and, by winnowing their
 9 customer base, reduce the CTAs' effective economies of scale, preventing the CTAs from pricing
 10 natural gas as competitively against PG&E's price as they once could since, no matter how low the
 11 CTA sets its prices, PG&E can use Consolidated Billing to reverse customers back to itself, or dupe
 12 the CTA into terminating the service, or falsely convince their customers to leave the CTA's gas
 13 services and return to PG&E's services.

14 134. Put another way, the predatory Schemes force CTAs into a Hobson's Choice: remain
 15 with PG&E's billing and collections services, operated in a predatory manner; or institute separate
 16 billing-and-collections, already determined to be a barrier to entry.

17 135. Indeed, as a result of the Schemes, PG&E increased its share of the load—and,
 18 therefore, its share of the natural gas market for Core Customers in the Relevant Geography—from
 19 81% to 85% in just the two years since implementing the predatory Schemes.

20 136. Consumers themselves have been harmed by PG&E's anticompetitive conduct since
 21 PG&E has been able to raise its prices without fear of competition from the CTAs. For example,
 22 Core Customers have experienced a 20% increase in gas prices at a time when wholesale gas prices
 23 have decreased by 50%, as set forth in Paragraph 86.

24 137. The Schemes pose a dangerous probability of allowing PG&E to achieve market
 25 power. The Schemes have erected barriers to entry and expansion in the Relevant Geography and
 26 resulted in a reduction in competition in the retail natural gas commodity market. Several
 27 companies that retail natural gas in other states, such as Colorado based Aurora NG, will not
 28 attempt entry as a result of PG&E's predatory practices. Other CTAs have allowed the Reversal

1 Scheme to dwindle their customer base for ultimate withdrawal from the market. One such CTA
2 has seen its customer base decline from about 40,000 to just around 5,000 since January 2015; this
3 company will not invest in acquiring additional customers because of the Schemes. PG&E's
4 schemes have made entry and expansion unprofitable, despite the fact that PG&E's gas supply is
5 priced above competitive levels, due to the increased costs of marketing, customer retention, and
6 carrying costs imposed by the Schemes.

7 138. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as
8 follows:

9 a. Actual damages in an amount to be proven at trial, but expected to be in the millions
10 of dollars;

11 b. Treble damages and attorneys' fees and costs as provided in 15 U.S.C. § 15; and

12 c. Any other relief the Court determines is appropriate.

FOURTH CAUSE OF ACTION (Breach of Fiduciary Duty)

15 139. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1
16 through 138 of this Complaint.

17 140. As set forth above, because Tiger has selected the option of Consolidated PG&E
18 Billing, PG&E acts as Tiger's billing and collections agent for all of Tiger's customers in PG&E's
19 service area.

20 141. Specifically, PG&E calculates the amounts owed by Tiger's customers for natural
21 gas, sends a bill containing Tiger's charges to Tiger's customers, collects payments from Tiger's
22 customers, and remits (or is supposed to remit) those amounts to Tiger.

142. Under this arrangement, PG&E represents Tiger with respect to billing and
23 collection issues to Tiger's customers and is entrusted with the duty to receive and disburse Tiger's
24 money and to keep accurate records of these transactions. Because they are Tiger's customers,
25 Tiger has a right to control and supervise PG&E's actions as the beneficiary of the fiduciary
26 relationship.
27

²⁸ 143. Accordingly, PG&E is Tiger's agent under Cal. Civ. Code § 2295, and owes Tiger a

1 fiduciary duty of loyalty.

2 144. PG&E has retained moneys that it collected from Tiger's customers for its own
3 benefit and has failed and refused to turn those amounts over to Tiger. This is a breach of PG&E's
4 duty of loyalty to Tiger.

5 145. In addition, PG&E has used its special relationship of trust as Tiger's billing and
6 collections agent as well as its position as the default monopoly natural gas provider to improperly
7 compete with Tiger, including making false representations to Tiger about the status of its customer
8 accounts and also encouraging Tiger's customers to cancel Tiger's services so that the customer
9 will revert back to PG&E.

10 146. Tiger has been damaged by PG&E's breach of its fiduciary duty to Tiger, including
11 amounts that PG&E has wrongfully withheld from Tiger and customers terminated without reason
12 due to PG&E's fraudulent representations to Tiger.

13 147. PG&E's breach of its duty of loyalty and fraud were done intentionally and with
14 malice designed to injure Tiger. Specifically, as set forth above in Paragraphs 45 through 89,
15 PG&E made repeated false statements to Tiger about the amounts owed and paid by Tiger's
16 customers, and wrongfully allocated Tiger customer payments to PG&E's own charges.

17 148. PG&E's breach of its duty of loyalty and fraud were made with the advance
18 knowledge and authorization of William H. Chen, the manager of PG&E's Account Services group
19 for Core Transport Agents.

20 149. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as
21 follows:

- 22 a. Actual damages in an amount to be proven at trial, but expected to be in the millions
23 of dollars;
- 24 b. Exemplary and punitive damages as permitted by law;
- 25 c. Its attorneys' fees and costs incurred as permitted by law; and
- 26 d. Any other relief the Court deems appropriate.

FIFTH CAUSE OF ACTION (Intentional Misrepresentation)

150. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1 through 149 of this Complaint.

151. PG&E made repeated, intentionally false statements to Tiger every time that PG&E used the wires to transmit information about Tiger's customer accounts which reflected that Tiger's customers had not paid for all of Tiger's charges, but where in fact the customer had either fully paid for Tiger's charges or where PG&E told the customer not to pay Tiger's charges.

152. These false statements were made as set forth in Paragraphs 54, 66, and 76 above and included affirmative false statements as to whether a customer had paid for Tiger's charges, as well as the intentional concealment of the fact that the customer had, in fact, paid Tiger's energy charges, but that PG&E retained those monies and applied them to its own customer accounts.

153. PG&E intended that Tiger rely on PG&E's false statements and intentional concealment. Tiger justifiably relied on PG&E's false statements about its customers by sending collection and disconnection notices to these customers when, in fact, the customer's Tiger charges were fully paid to PG&E.

154. PG&E's intentional false statements have caused Tiger damages, including lost revenues and income unlawfully withheld by PG&E, lost customers, lost market share, out of pocket costs associated with trying to collect customer accounts which PG&E falsely represented were not paid, and costs associated with trying to repair customer relationships for customers which Tiger mistakenly attempted to collect from when in fact the customer had fully paid all of Tiger's charges but PG&E had wrongfully withheld those amounts from Tiger. Through its actions, PG&E intended to cause Tiger injury. Further, PG&E carried on its actions with a willful and conscious disregard of the rights of Tiger and Tiger's customers.

155. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as follows:

- a. Damages in an amount to be proven at trial, but estimated to be in the millions of dollars;
- b. Exemplary and punitive damages under Cal. Civ. Code § 3294;

- c. Its attorneys' fees and costs incurred as permitted by law; and
- d. Any other relief the Court deems appropriate.

SIXTH CAUSE OF ACTION (Negligent Misrepresentation)

156. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1 through 155 of this Complaint.

157. PG&E made repeated false statements to Tiger every time that PG&E used the wires to transmit information about Tiger's customer accounts which reflected that Tiger's customers had not paid for all of Tiger's charges, but where in fact the customer had fully paid for Tiger's charges but PG&E intentionally allocated those amounts to PG&E's portions of the customer's bill. These misrepresentations were material and were made without PG&E having reasonable grounds for believing the misrepresentations to be true.

158. These misrepresentations were made as set forth in Paragraphs 1 through 89 above and included affirmative false statements as to whether a customer had paid for Tiger's charges, as well as the intentional concealment of the fact that the customer had, in fact, paid Tiger's energy charges, but that PG&E retained those monies and applied them to its own customer accounts.

159. PG&E intended that Tiger rely on PG&E's misrepresentations. Tiger justifiably relied on PG&E's misrepresentations about its customers by, *inter alia*, disconnecting its customers when, in fact, the customer's Tiger charges were fully paid to PG&E.

160. PG&E's misrepresentations described above have caused Tiger damages, including lost revenues and income unlawfully withheld by PG&E, lost customers, lost market share, out of pocket costs associated with trying to collect customer accounts which PG&E falsely represented were not paid, and costs associated with trying to repair customer relationships for customers which Tiger mistakenly attempted to collect from when in fact the customer had fully paid all of Tiger's charges but PG&E had wrongfully withheld those amounts from Tiger.

161. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as follows:

- 1 a. Actual damages in an amount to be proven at trial, but expected to be in the millions
2 of dollars;
- 3 b. Exemplary and punitive damages under Cal. Civ. Code § 3294;
- 4 c. Its attorneys' fees and costs incurred as permitted by law; and
- 5 d. Any other relief the Court deems appropriate.

7 **SEVENTH CAUSE OF ACTION**
8 **(Intentional Interference with Contract)**

9 162. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1
10 through 161 of this Complaint.

11 163. Tiger and its customers are parties to valid contracts under which Tiger provides
12 natural gas and the customers pay Tiger's charges for that gas.

13 164. PG&E is aware of Tiger's contracts with its customers.

14 165. PG&E's intentional acts are designed to induce a breach or disruption of the
15 contracts between Tiger and its customers. Specifically, PG&E made repeated, intentionally false
16 statements to Tiger every time that PG&E used the wires to transmit information about Tiger's
17 customer accounts which reflected that Tiger's customers had not paid for all of Tiger's charges,
18 but where in fact the customer had fully paid for Tiger's charges but PG&E intentionally allocated
19 those amounts to PG&E's portions of the customer's bill.

20 166. In addition, PG&E's customer service representatives have encouraged Tiger
21 customers to cancel Tiger's services during calls to discuss billing issues, which is an abuse of
22 PG&E's status as Tiger's billing and collection agent.

23 167. PG&E intended to interfere with contracts between Tiger and its customers by
24 inducing Tiger to send disconnection notices to these customers when, in fact, the customers' Tiger
25 charges were fully paid to PG&E.

26 168. Certain Tiger customers have cancelled their contracts with Tiger based on PG&E's
27 interference with the contracts between Tiger and these customers.

28 169. PG&E's intentional interference with the contracts between Tiger and its customers
have caused Tiger damages, including lost revenues and income unlawfully withheld by PG&E, lost

1 customers, lost market share, out-of-pocket costs associated with trying to collect customer
2 accounts which PG&E falsely represented were not paid, and costs associated with trying to repair
3 customer relationships for customers which Tiger mistakenly attempted to collect from when in fact
4 the customer had fully paid all of Tiger's charges but PG&E had wrongfully withheld those
5 amounts from Tiger.

6 170. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as
7 follows:

- 8 a. Damages in an amount to be proven at trial, but estimated to be in the millions of
9 dollars;
- 10 b. Damages under Cal. Civ. Code § 3294;
- 11 c. Its attorneys' fees and costs incurred as permitted by law; and
- 12 d. Any other relief the Court deems appropriate.

13 **EIGHTH CAUSE OF ACTION**
14 **(Intentional Interference with Prospective Business Advantage)**

15 171. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1
16 through 170 of this Complaint.

17 172. Tiger and its customers have an economic relationship in which Tiger provides
18 natural gas and the customers pay Tiger's charges for that gas and under which there is a probability
19 of future economic benefit to Tiger.

20 173. PG&E is aware of Tiger's economic relationship with its customers.

21 174. PG&E's intentional acts are designed to induce a breach or disruption of the
22 economic relationship between Tiger and its customers. Specifically, PG&E made repeated,
23 intentionally false statements to Tiger every time that PG&E used the wires to transmit information
24 about Tiger's customer accounts which reflected that Tiger's customers had not paid for all of
25 Tiger's charges, but where in fact the customer had fully paid for Tiger's charges but PG&E
26 intentionally allocated those amounts to PG&E's portions of the customer's bill.

27 175. PG&E intended to interfere with the economic relationship between Tiger and its
28 customers by inducing Tiger to send disconnection notices to these customers when, in fact, the

1 customers' Tiger charges were fully paid to PG&E.

2 176. In addition, PG&E's customer service representatives have encouraged Tiger
3 customers to cancel Tiger's services during calls to discuss billing issues, which is an abuse of
4 PG&E's status as Tiger's billing and collection agent.

5 177. Certain Tiger customers have cancelled their economic relationship with Tiger based
6 on PG&E's interference with the economic relationship between Tiger and these customers.

7 178. PG&E's intentional interference with the economic relationship between Tiger and
8 its customers have caused Tiger damages, including lost revenues and income unlawfully withheld
9 by PG&E, lost customers, lost market share, out of pocket costs associated with trying to collect
10 customer accounts which PG&E falsely represented were not paid, and costs associated with trying
11 to repair customer relationships for customers which Tiger mistakenly attempted to collect from
12 when in fact the customer had fully paid all of Tiger's charges but PG&E had wrongfully withheld
13 those amounts from Tiger.

14 179. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as
15 follows:

- 16 a. Damages in an amount to be proven at trial, but estimated to be in the millions of
17 dollars;
- 18 b. Exemplary and punitive damages under Cal. Civ. Code § 3294;
- 19 c. Its attorneys' fees and costs incurred as permitted by law; and
- 20 d. Any other relief the Court deems appropriate.

21 **NINTH CAUSE OF ACTION**
22 **(Violation of Cal. Bus. & Prof. Code § 17200, et seq.)**

23 180. Tiger incorporates herein by reference all allegations set forth in Paragraphs 1
24 through 179 of this Complaint.

25 181. PG&E's actions as described above are unlawful, unfair, anti-competitive, and/or
26 fraudulent business practices as defined by Cal. Bus. & Prof. Code § 17200, et seq.

27 182. PG&E's unlawful, unfair, anti-competitive, and/or fraudulent business practices have
28 caused Tiger damages and irreparable harm.

1 183. Tiger seeks restitution of all amounts paid by Tiger customers to PG&E that PG&E
2 has not remitted to Tiger, plus applicable interest.

3 184. WHEREFORE, Plaintiff requests that this Court enter judgment against PG&E as
4 follows:

5 a. Restitution of all amounts paid by Tiger customers for Tiger natural gas charges
6 which are being wrongfully held by PG&E;
7 b. Its attorneys' fees and costs incurred as permitted by law; and
8 c. Any other relief the Court deems appropriate.

REQUEST FOR RELIEF

10 WHEREFORE, Plaintiff TIGER NATURAL GAS, INC. prays for judgment against
11 Defendants Pacific Gas and Electric Company, Albert Torres, Bill Chen, and Tanisha Robinson as
12 follows:

13 (1) Actual damages on all applicable Counts in an amount to be proven at trial;

14 (2) Treble damages and attorneys' fees and costs as provided in 18 U.S.C. § 1964(c);

15 (3) Treble damages and attorneys' fees and costs against Pacific Gas & Electric

16 Company as provided in 15 U.S.C. § 15;

17 (4) Exemplary and punitive damages as permitted by law;

18 (5) Any other attorneys' fees and costs as permitted by law; and

19 (6) Such other and further relief as may be appropriate.

JURY DEMAND

21 Tiger respectfully demands a trial by jury under Fed. R. Civ. P. 38 on all of its claims so
22 triable as permitted by law.

23 Dated: November 18, 2016

/s/ Nicholas B. Melzer
HOLLAND & KNIGHT LLP
Nicholas B. Melzer

Attorneys for Plaintiff
TIGER NATURAL GAS, INC.